

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

LONNIE EUGENE LILLARD,

Defendant.

CASE NO. CR16-07RSM

ORDER DENYING DEFENDANT  
LILLARD'S MOTION FOR  
COMPASSIONATE RELEASE

This matter comes before the Court on Defendant Lonnie Eugene Lillard's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A). Dkt. #425. The Court has determined that an evidentiary hearing is unnecessary. Mr. Lillard argues that the "erroneously [sic] deprivation of his Sixth Amendment right to counsel of choice combined with the deprivation of counsel during a critical stage of his criminal proceedings is an extraordinary and compelling reason for an immediate sentence reduction or alternatively a stay of the rest of his sentence of imprisonment pending the outcome of the appellate proceedings." Dkt. # 425 at 11. The Court agrees with the Government's assessment that Mr. Lillard "does not seek relief based on any serious and non-reversible medical condition that impacts his ability for self-care in the prison institution, or some extraordinary family circumstance," and is instead "seeking to use this

1 motion to bring a collateral challenge to his conviction, something this statute does not provide  
2 authority to address.” Dkt. #432 at 1.

3 Pursuant to 18 U.S.C. § 3582(b), a judgment of conviction that includes a sentence of  
4 imprisonment “constitutes a final judgment and may not be modified by a district court except in  
5 limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824 (2010) (internal quotations  
6 omitted). Those limited circumstances are provided under 18 U.S.C. § 3582(c)(1)(A)(i).

7 Effective December 21, 2018, the First Step Act of 2018 amended Section 3582(c)(1)(A)  
8 by adding a provision that allows prisoners to directly petition a district court for compassionate  
9 release:  
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11 (A) the court, upon motion of the Director of the Bureau of Prisons,  
12 *or upon motion of the defendant after the defendant has fully*  
13 *exhausted all administrative rights to appeal a failure of the Bureau*  
14 *of Prisons to bring a motion on the defendant’s behalf or the lapse*  
15 *of 30 days from the receipt of such a request by the warden of the*  
16 *defendant’s facility, whichever is earlier,* may reduce the term of  
17 imprisonment (and may impose a term of probation or supervised  
release with or without conditions that does not exceed the unserved  
portion of the original term of imprisonment), after considering the  
factors set forth in section 3553(a) to the extent that they are  
applicable, if it finds that—

18 (i) extraordinary and compelling reasons warrant such a reduction;

19 or

20 (ii) the defendant is at least 70 years of age, has served at least 30  
21 years in prison, pursuant to a sentence imposed under section  
22 3559(c), for the offense or offenses for which the defendant is  
23 currently imprisoned, and a determination has been made by the  
24 Director of the Bureau of Prisons that the defendant is not a danger  
to the safety of any other person or the community, as provided  
under section 3142(g);

25 and that such a reduction is consistent with applicable policy  
26 statements issued by the Sentencing Commission . . . .

27 18 U.S.C. § 3582(c)(1)(A) (italics reflecting amendment under First Step Act).

1 The Court finds that Mr. Lillard has exhausted his administrative remedies, *see* Dkt.  
2 #425-1, and therefore moves on to the question of extraordinary and compelling reasons  
3 particular to this Defendant justifying the requested relief. Mr. Lillard does not set forth  
4 extraordinary and compelling reasons, instead his claim is a collateral challenge to his conviction  
5 (for which he currently has a pending appeal). The Government, points out that “[Section]  
6 3582(c)(1)(A) provides a mechanism to seek a reduction in the term of a sentence, not to  
7 challenge its validity.” Dkt. # 432 at 8 (citing *United States v. Handerhan*, 789 F. App’x 924,  
8 926 (3rd Cir. 2019)). As the Third Circuit observed in that case, “neither the statute nor its policy  
9 statement provide for release on the basis of arguments... that were or could have been raised on  
10 direct appeal or in a § 2255 motion.” *Id.* The Court therefore finds that Mr. Lillard’s Motion is  
11 procedurally improper and does not set forth a valid basis for relief under § 3582(c)(1)(A).  
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13 Mr. Lillard tangentially mentions that he has diabetes and that this is a risk factor for  
14 COVID-19. Dkt. #425 at 21. Mr. Lillard appears to acknowledge that he did not raise this issue  
15 in his request to the Warden. *Id.* at 22. He undermines the relevance of this issue by stating “the  
16 current conditions of confinement are not central to determining whether or not extraordinary or  
17 compelling circumstances exist,” by saying that “he currently is serving a sentence of  
18 imprisonment in violation of the Fifth and Sixth Amendments to the Constitution [and this] is  
19 the reason why this Court should find that extraordinary and compelling circumstances exist,”  
20 and by saying he “is not arguing such as it relates to the global pandemic.” *Id.* The Court, and  
21 apparently the Government, are left with the distinct impression that they should *not* address this  
22 issue at this time.  
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25 Confusingly, Mr. Lillard has filed an addendum/supplement to this Motion expanding on  
26 his COVID-19 concerns as a basis for compassionate release, stating that he is filing a new  
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1 request for such relief to the Warden, and by citing additional case law. Dkt. #439. He provides  
2 no authority for shoehorning into his current Motion new argument for compassionate release.  
3 In any event, considering such arguments now would deny the Government an opportunity to  
4 respond.

5 Having reviewed the applicable briefing, along with the remainder of the record, the  
6 Court hereby finds and ORDERS that Defendant Lillard's Motion to Reduce Sentence Pursuant  
7 to 18 U.S.C. § 3582(c)(1)(A), Dkt. #425, is DENIED.  
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10 DATED this 8<sup>th</sup> day of October, 2020.

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14 RICARDO S. MARTINEZ  
15 CHIEF UNITED STATES DISTRICT JUDGE  
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